SUPREME COURT, U. S.
FILED
NOV 20 1973
MICHAEL RODAK, JR., CLERK

No. 73-632

In the Supreme Court of the United States

OCTOBER TERM, 1973

LEONARD JOSEPH JOHNSON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-632

LEONARD JOSEPH JOHNSON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Central District of California, petitioner and co-defendants Alvin James White and Clinton Crubet Woods were convicted of conspiracy to distribute heroin, in violation of 21 U.S.C. 846. Petitioner was also convicted of two counts of possession and distribution of heroin, in violation of 21 U.S.C. 841(a)(1). Petitioner was sentenced to concurrent terms of seven years' imprisonment on each count. The court of appeals affirmed (Pet. App.). Petitioner's motion to file a late petition for rehearing was denied on September 7, 1973.

Petitioner did not appear before the district court on September 10, 1973, when the judgment of the court of appeals was to be spread on the record. His bail was forfeited, new bail was set at $100,000, and a bench warrant was issued for him. Petitioner has to

date neither posted new bail nor surrendered himself. Because of petitioner's fugitive status, further review is not warranted. See *Molinaro* v. *New Jersey*, 396 U.S. 365.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

NOVEMBER 1973.

DOJ-1973-11